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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,085	08/14/2000	STEPHEN JACOBS	A31222-PCTUSA	3842
21003	7590	03/27/2003		
BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER	
			MEHRA, INDER P	
		ART UNIT	PAPER NUMBER	
		2666	6	
DATE MAILED: 03/27/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/530,085	JACOBS ET AL.
	Examiner	Art Unit
	Inder P Mehra	2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 14 August 2000.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-36 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-36 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other:

**DETAILED ACTION**

***Specification***

1. The disclosure is objected to because of the following informalities:  
Even number pages 2, 4, 6, 8, 10, 12 are missing. Please provide these pages.  
Appropriate action is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-13, 15-25, and 27-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Keshav (US Patent No. 5,627,970).

For claims 1, 11, 13, 23, 25, and 35, Keshav discloses a method and system for achieving and maintaining data transmission rates (bandwidth) between a source and a destination node in a digital data network, refer to abstract. The system of Keshav, further, includes the means for maintaining an estimate of bandwidth available from source node from to the destination node, refer to col. 6 lines 9-25; and means for adjusting transmission based on the estimate, refer to col. 6 lines 25-31.

For claims 3, 15, and 27, the system of Keshav monitors packet loss based on acknowledgments from the destination node, refer to col. 7 line 60 through col. 8 line 5;

For claims 4, 7, 16, 19, 28 and 31, Keshav discloses maintenance of count of packet/bytes, refer to col. 7 lines 66, to col. 8 line 2;

For claims 5, 6, 8, 9, 17, 18, 20, 21, 29, 30, 32, and 33, Keshav discloses maintaining the data transmission rates of as to how many packets/bytes are allowed to be transmitted (upper bound), refer to abstract, in accordance with TCP (IP) congestion window, refer to col. 2 line 31.

For claims 10, 12, 22, 24, 34, and 36, the system of Keshav also retransmits a packet which has been determined as a lost packet at the destination node, refer to col. 8 lines 32-35.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 14, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keshav as applied to claims 1, 13 and 26 above, and further in view of **Gittins et al** (US Patent no. 5,526,350), hereinafter, Gittins.

For claims 2, 14, and 26, Keshav discloses all the features of the subject matter, including the transmission of the system utilizing IP protocol which supports transmission in real time, refer to col. 5 lines 48-53, as explained in paragraph 3 above, with the exception of the following limitation of claims 2, 14 and 26:

- data comprises video data;

Gittins discloses data comprises video data, refer to col. 7 line 21-23;

It would have been obvious to a person of ordinary skill in the art at the time of invention to compress video data before transmission across the network. A person of ordinary skill in the art would have been motivated to employ Gittins's communication network into Keshav's system for a method and apparatus for achieving and maintaining optimum transmission rates, in order to compress video data for transmission. The suggestion/motivation to do so would have been to optimize the use of bandwidth and storage space.

#### **Prior Art**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Tokura et al (US Patent No. 5,400,329) discloses packet network and method for congestion avoidance in packet networks.
- Derby et al (US Patent No. 5,359,593) discloses dynamic bandwidth estimation and adaptation for packet communications networks

***Conclusion***

7. Any enquiry concerning this communication should be directed to Inder Mehra whose telephone number is (703) 305-1985. The examiner can be normally reached on Monday through Friday from 8:30AM to 5:00 PM.

If attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Seema Rao , can be reached on (703) 308-5463. Any enquiry of a general nature of relating to the status of this application or processing should be directed to the group receptionist whose telephone number is (703) 305-4700.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, DC. 20231

Or faxed to (703) 872-9314.

Hand -delivered responses should be brought to Crystal Park II, 2121 Crystal drive, Arlington, VA, sixth floor (Receptionist).

Inder Mehra  
Inder Mehra 3/19/03  
March 19, 2003

*IM*

DANTON  
PRIMARY EXAMINER